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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 25, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 92-265

Dear Ms. Searcy:

This is to provide notice pursuant to Section 1.1206(a)(2) of the Commissions's rules that on March 22, 1993, Robert L. Johnson, President, Black Entertainment Television, Inc., and Maurita K. Coley, its Vice President, Legal Affairs, had a telephone conference with Byron F. Marchant, Legal Advisor to Commissioner Andrew C. Barrett to discuss further BET's position (set forth in a March 18, 1993 ex parte notice) on the Program Access rulemaking.

A summary of our position is attached hereto. If you have any questions regarding this matter, please contact me.

Very truly yours,

  
Maurita K. Coley

Enclosure

cc: Chairman James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Ervin S. Duggan  
Robert Corn-Revere, Esq.  
Byron F. Marchant, Esq.  
John C. Hollar, Esq.  
Robert L. Johnson

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**Black Entertainment Television**

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## Summary of Position of Black Entertainment Television, Inc.

### Program Access - MM Docket 92-265

#### BET'S POSITION ON PROGRAM ACCESS

BET has stated on the record in this proceeding that minority programmers such as BET could not have existed without cable operator investment, that we should not be penalized for having such investments, and that we need to have the flexibility to impose reasonable price differences for different types of distributors. The Commission must not ignore the express language of Section 19 which acknowledges our right to charge different prices for different distribution media based on more than just cost-based criteria. The statute expressly authorizes differences based on things such as "creditworthiness, offering of service, and financial stability and standards regarding character and technical quality...actual and reasonable differences in the cost of creation, sale, delivery, or transmission...economies of scale, costs savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor...".

As we have stated previously, the statute allows us to maintain the business discretion to price our service for different technologies if we deem it to be appropriate, so long as any price differentials are reasonable. A party who claims competitive harm from a pricing differential has an adequate remedy under the statute provided it demonstrates actual injury to competition.

Finally, we would like to point out to the Commission that minority programmers are the primary source of true programming diversity. For us to survive and grow, we must be able to compete effectively with mass appeal programmers. It certainly was not Congress' intention to hinder our ability to compete by imposing unnecessary price restraints while giving unregulated price discretion to larger mass appeal programmers such as ESPN, and USA simply because they do not have cable operator investors. We believe such a construction of the Act is totally out of touch with reality and contrary to the expressed diversity goals under the Act.

#### EXEMPTION FOR MINORITY PROGRAMMERS

The Commission should exempt minority programmers such as BET from the definition of "affiliated" programmers under Section 19. There is ample support in the 1992 Cable Act for the fact that Congress did not intend to negatively impact minority programmers in its efforts to increase diversity in the multichannel video marketplace.

- a) Section 19: Program Access. The plain language of Section 19(a) states that "[t]he purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market...".

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- b) Section 9: Commercial Leased Access. Section 9(a) of the Act concerning commercial leased access contains a specific amendment to the purpose, which is "to promote competition in the delivery of diverse sources of video programming" to the public.
- 1) Section 9(c) also specifically amended the commercial leased access provision to allow cable operators to carry minority programmers to satisfy up to 1/3rd of the operator's commercial leased access requirements, "whether or not [the programmer] is affiliated with the cable operator". This language represents Congress' express acknowledgement that affiliated minority programmers were not to be treated the same as affiliated programmers.

### **GRANDFATHERING PROPOSAL**

Absent an express exemption from the definition of "affiliated" programmer under the Act, BET urges the Commission to apply any restrictions prospectively and grandfather existing minority programmers that have cable operator investors so as not to negatively impact the programmer's business plans and capital investments.